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DESBORDAMIENTO DE  
ENROCAMIENTO  
ESTABILIZADOR DE TALUD  
HACIA MÉXICO



EUA

MÉXICO



## LÍNEA DIVISORIA INTERNACIONAL ENTRE MONUMENTOS (b) (7)(E)

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Letrero Demarcador  
de la Línea Divisoria  
Internacional

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INTERNATIONAL BOUNDARY AND WATER COMMISSION		
UNITED STATES AND MEXICO		
UNITED STATES SECTION		
USIBWC REAL PROPERTY ASSESSMENT		
PROJECT: GO FUND ME FENCE		
EOF:	N/A	R/W FILE No. N/A
NEW MEXICO STATE PLANE CENTRAL		
UPDATE BY:	(b) (6)	JUNE 4, 2019

**Review:**

1. Current proposal of gate location (b) (7)(E) creating safety and security problem. Agency does not have resources to properly handle increased illegal traffic crossing (b) (7)(E) (b) (7)(E) Not placing a fence in the proposed area would provide less of a pathway to USIBWC infrastructure.

- *Fisher Industries response: Response Solutions that propose to reduce or remove a private property owner's right to fence or otherwise deny illegal access and provide protection to their own property are patently unfair and unacceptable.*
- *USIBWC response: Concerns of directing the flow of illegal immigrants and unauthorized persons toward (b) (7)(E) of the privately funded/built gate are approximately (b) (7)(E) These gates are for flood purposes on (b) (7)(E) Private entities do not have the right to erect gates on or obstruct access through public lands without authorization. Doing so may constitute a violation of federal laws, including: 43 U.S.C § 1061; 43 U.S.C. § 1063; 18 U.S.C. § 1361.*

2. The trench that was dug to place the concrete slab needs to be backfilled and compacted. It is imperative that a smooth transition be made on the driving surface of the levee and top of concrete slab that was placed for the gate.

- *Fisher Industries response: This has been done. Thank you*
- *USIBWC response: USIBWC will clear this action item pending land inspection and agency satisfaction of works by the contractor.*

3. Consultation letters are required for any portion of the work that is within the limits of property owned by the U. S. Government. A Point of Contact for the USACE has been provided under a separate email and is (b) (6) Las Cruces USAG (b) (6)

- *Fisher Industries response: Our coordination was with the Department of Homeland Security to provide effective measures to prevent individuals from illegally entering the United States. It is our hope that the various agencies would work together to make that happen.*
- *USIBWC response: Please provide written documentation demonstrating applicant's coordination with DHS regarding the proposed project and confirming that it is a DHS-sponsored project. In response to comment 1 above, applicant stated that the purpose of the gate was to protect private property – this answer to number 3 indicates that it serves a governmental purpose.*

*Non-governmental entities seeking permits from the USIBWC must coordinate with US Army Corps of Engineers (USACE) to make a determination of whether the project impacts jurisdictional waters and provide a letter from USACE that explains USACE's analysis of the proposed project and determination with regard to jurisdictional waters. This consultation is not incumbent on the USIBWC, but on the project proponent.*



4. A Drainage Report is required to be submitted for the erection of the fence in this area. The report should include the grading plan that was implemented for this project. The Mexican Section of the IBWC has raised concerns that the grading will negatively impact the country of Mexico; cause erosion and divert stormwater to their side.

- *Fisher Industries response: A Drainage Report will be provided as requested. The runoff flows will not cause any abnormal erosion or significant negative impacts to the neighboring property in Mexico.*
- *USIBWC response: Insufficient documentation was submitted. Please submit the following:*
  - A. Drainage design provided is for 10-year storm whereas USIBWC looks at 100-year storm event. Perform the calculations for the 100-year storm event.*
  - B. Time of concentrations for the basins are not shown; Clearly show how the storm duration was determined citing the appropriate formula.*
  - C. Runoff coefficients for some of the basins are smaller; please provide the reference from which these values are taken. Alternatively, City of El Paso, Texas Drainage Design Manual dated June 2008 can be utilized.*
  - D. As per attachment "We Build The Wall; initial Project at AEB attached as "EXHIBIT C". Please provide the delineation of areas A through H.*
  - E. Provide a comparison of pre and post-project peak runoff values for each sub-basin.*
  - F. As per the attached photo Titled "EXHIBIT A", areas have been identified by CILA where construction fill has spilled over into Mexico. These areas can be identified as mounds in the soil profile. Please remove the fill.*
  - G. Any damage to the monument or USIBWC levees from runoff generated from the project area needs to be repaired by the proponent to the USIBWC's satisfaction.*

5. As per the attached photo, areas have been identified by Mexican IBWC (GILA) where construction fill has spilled over into Mexico. These areas can be identified as mounds in the soil profile. Please remove the fill.

- *Fisher Industries response: The photo does not accurately depict the international boundary or the placement of fill. The construction equipment and personnel were very careful to never enter into Mexico. If some minor amount of the rocky material rolled off the slope it is not meant as an intentional affront to our neighbor or as any form of trespass. Due to the terrain and past activities the materials in this area have been comingled in the past due to both natural and mechanical processes.*
- *USIBWC response: The USIBWC has verified the location of the international boundary. Contractor must remove all fill that encroached into Mexico. Please see "EXHIBIT A"*

6. Provide a general statement that at locations of construction, disturbances of soils where significant flow occur, rip rap or similar erosion protection will be provided.

- *Fisher Industries response:* *The drainage channels that will handle the larger flows are protected with rip rap and rock check dams. Detention basins were also installed to hold some of the rainfall on site.*
- *USIBWC response:* *USIBWC will clear this action item pending land inspection and agency satisfaction of works by the contractor, please refer to comments # 4 for drainage comments.*

7. Any future erosion related issues arising from the construction need to be addressed by the construction company.

- *Fisher Industries response:* *All of the grading and drainage has been completed and meets the standard accepted practice. However, that does not absolutely guarantee that erosion will never occur in the future.*
- *USIBWC response:* *Ponding areas on private property shall be desilted regularly to meet the design capacity - Please coordinate with Engineering office. Please provide operation and maintain schedules of these ponds if any.*

8. Clear any obstructions in culvert for flow of water to continue to the culvert and within it.

- *Fisher Industries response:* *The culvert is clear of all obstructions at this time.*
- *USIBWC response:* *USIBWC will clear this action item pending land inspection and agency satisfaction of works by the contractor.*

9. Fence location shall be moved to the location as stated by Security Division.

- *Fisher Industries response:* *It is our understanding that the operational and control questions regarding the gate have been resolved in a manner which satisfies the need for access to Boundary Marke (b) (7)(E)*
- *USIBWC response:* *USIBWC had requested a structure not be constructed without first seeking authorization and had requested that the structure be constructed at another location to avoid (b) (7)(E). Once the unauthorized structure was built at the original location and not the location recommended by USIBWC, the USIBWC advised the contractor that: the gate should be motorized; gate opening (b) (7)(E); the gate structure shall be on an easement, and power should be provided by the contractor; USIBWC shall have uninterrupted access through the gate. These items are not completed.*

10. Coordination needed for USACE, NMED, NMSHPO, and USFWS (see Real Estate list). They must coordinate with those agencies and get clearances. This area has cultural features and other items such as contaminated soil (for metals) that probably have not been considered. The final documents should include a letter from each agency giving clearance to the project.

- *Fisher Industries response:* *It is our understanding that NEPA requirements have been varied to accommodate and expedite these bollard fence projects. However, Fisher has still maintained a sufficient focus on the protection of the environment and has taken all reasonable steps to adhere to the intent of these regulations. There were no Historic sites and Threatened and Endangered species were not at this location or otherwise placed at risk.*
- *USIBWC response:* *Legislation in 1996 allows the DHS to waive various requirements, including NEPA requirements, when DHS is constructing border security structures. The DHS*



*issues a notice of each waiver for border security projects when it invokes the 1996 waiver and the notice is printed in the Federal Register. Please provide written documentation that demonstrates that DHS has issued a waiver for this project such that NEPA requirements are waived. Or, provide other citations to law or documents that allows "variation" from NEPA requirements that are applicable to a private project constructed on publicly-owned land.*

*Please provide your basis for your determination that there are no Historic sites and Threatened and Endangered species. This must include a written determination from the New Mexico State Historic Preservation Office (NMSHPO) (regarding historic sites) and Threatened and Endangered Species (US Fish & Wildlife Service - USFWS).*

**11. ESD wasn't at the meeting but they require design drawings and a hydraulic/hydrologic study of the project to confirm the drainage and BMP's that are being implemented.**

- **Fisher Industries response:** Design drawings are being provided as requested.
- **USIBWC response:** *Insufficient documentation was submitted. Please provide hydraulic/hydrologic studies of the project. Engineering is unable to determine if drainage and BMP's are implemented.*

**12. After reviewing the initial application; application does not include drainage reports or any flood related documentation indicating drainage. A hydraulic review could not be conducted without that information**

- **Fisher Industries response:** *A drainage analysis has been provided. All flows which originate on the U.S. side are routed and detained in a series of basins and delivered to the original outlet culvert and then into the Rio Grande. This minimizes the flooding potential for any property in Mexico.*
- **USIBWC response:** *Insufficient documentation was submitted. Please provide proof of your response in connection to previous requests for all drainage reports.*

**13. proponent application does not include any resource agency statements. The proponent must contact the following resource agencies and provide correspondence as part of their application:**

**A. Appropriate Historic Preservation officer(s) in order to find out if you need a cultural resources survey of the area.**

- **Fisher Industries response:** *There were no Historic sites. This area was extensively disturbed by recent mining activity.*
- **USIBWC response:** *No NMSHPO correspondence was provided. As previously requested, please provide proof of correspondence with this resource agency. This consultation is not incumbent on the USIBWC, but on the project proponent.*

**B. United States Fish and Wildlife Service (FWS), to determine the impact of the project on threatened and endangered species, both animal and plant life.**

- **Fisher Industries response:** *There were no Threatened and Endangered species at this location.*
- **USIBWC response:** *No USFWS correspondence was provided. As previously requested, please provide proof of correspondence with this resource agency. This consultation is not incumbent on the USIBWC, but on the project proponent.*

**C. United States Army Corps of Engineers (USACE), to determine the effects of the proposed project on the waters of the U.S. (Wetlands, streams, and rivers) in the area**

- ***Fisher Industries response:** A drainage analysis has been provided. All flows which originate on the U.S. side are routed and detained in a series of basins and delivered to the original outlet culvert and then into the Rio Grande. This Minimizes the flooding potential for any property in Mexico.*
- ***USIBWC response:** No USACE correspondence was provided. As previously requested, please provide proof of correspondence with this resource agency. This consultation is not incumbent on the USIBWC, but on the project proponent.*

**General Comments:**

1. In addition to the above, the USIBWC would like a maintenance plan for the structure including, types of scheduled maintenance by the permittee.
2. Please provide evidence of insurance, bond, or other source financing for the permittee's liability for damages or injuries caused by the gate.

**ATTACHMENTS:**

**EXHIBIT A – Map of Mexican Encroachment. Protective Works Above AD CAD New Mexico Central 9.21**  
**EXHIBIT B – Mexican IBWC photographs showing boundary lines.**  
**EXHIBIT C – Attachment “We Build The Wall; initial Project at AEB**

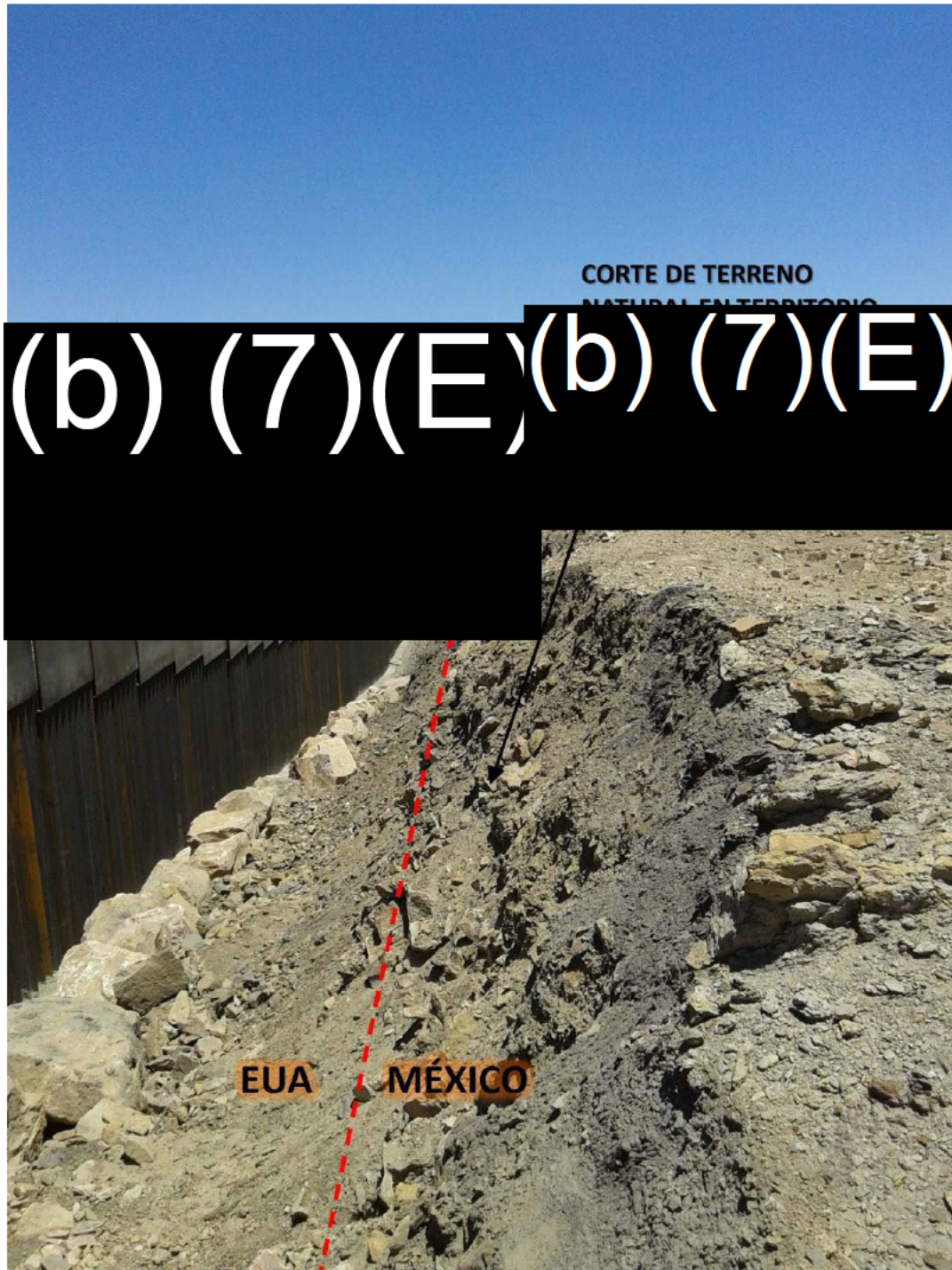


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“EXHIBIT B”





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